IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5145 of 1989

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHUPENDRAPRASAD P RAO

Versus

BARODA MUNICIPAL CORPORATION

Appearance:

1. Special Civil Application No. 5145 of 1989

MR BHARAT T RAO for Petitioner

MR PRANAV G DESAI for Respondents No. 1-2,5

NOTICE SERVED for Respondents No. 3-4

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 01/12/2004

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner, an Assistant Engineer in the respondent-Vadodara Municipal Corporation [hereinafter referred to as, "the Corporation"] claims promotion to the post of Deputy Executive Engineer pursuant to the selection procedure held in the year 1988. The petitioner has claimed that he was eligible for appointment to the post of Deputy Executive Engineer [Civil].

By Circular dated 3rd August, 1988, the Corporation had invited applications for appointment to the post of Deputy Executive Engineer [Civil] from amongst senior Additional Assistant Engineers [Civil] and Assistant Engineers [Civil]. Pursuant to the said Circular, the petitioner had applied for appointment to the post of Deputy Executive Engineer [Civil]. The petitioner was called for interview on 15th October, 1988. However, the petitioner was not appointed to the post of Deputy Executive Engineer [Civil]. Therefore, the present petition.

Learned advocate Mr. Rao has submitted that the petitioner belongs to a Socially & Educationally Backward community. He was, therefore, entitled to appointment on the post reserved for such candidate. He has submitted that the post of Deputy Executive Engineer [Civil] were newly created and six vacancies were advertised by circular dated 3rd August, 1988. According to the prevalent roster, the sixth post was required to be reserved for Socially & Educationally Backward community candidate. The petitioner being one, he ought to have been appointed on the sixth vacancy. However, the petitioner has been denied the benefit of reservation policy.

The Corporation has contested the petition. The allegations of malafide made against the Corporation and the Municipal Commissioner are specifically denied. It is denied that the petitioner was by-passed. It is, however, not stated whether pursuant to the said selection procedure, the petitioner was found to be suitable for appointment as Deputy Executive Engineer [Civil]. If the petitioner were suitable, why the petitioner could not be appointed against the reserved vacancy, or whether there was any other suitable candidate belonging to the same category above the petitioner.

In absence of such relevant materials before the Court, the petition is required to be allowed to the

extent that the petitioner's suitability as in October, 1988 or during any other subsequent selection procedure is required to be ascertained, and if found suitable and there is no other suitable claimant belonging to the Socially & Educationally Backward community, the petitioner would be entitled to be appointed against the reserved vacancy.

In above view of the matter, the petition is allowed. The respondent-Vadodara Municipal Corporation is directed to ascertain whether the petitioner was found to be suitable for appointment during the aforesaid selection procedure held in October, 1988. If the petitioner were found suitable, the Corporation shall ascertain his position on the select list. In absence of any other suitable claimant of Socially & Educationally Backward community, the petitioner should be given appointment as Deputy Executive Engineer [Civil] against the aforesaid roster point number six. The aforesaid exercise shall be completed within three months from today. In the event, the petitioner is not found entitled to such appointment, a speaking order shall be made. Copy of such order shall be given to the petitioner. In the event, the petitioner is refused appointment as Deputy Executive Engineer [Civil] pursuant to this direction, the petitioner shall have a fresh cause of action and shall be at liberty to challenge such decision.

Rule is made absolute in the above terms with cost.

[Miss R.M Doshit, J.]

Prakash*